

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT)	Notice of Administrative
ACTION AGAINST)	Charges
)	
Ed Herbert, Ballard High School,)	PDC CASE NO: 04-663
School District No. 1)	
)	
Dennis Nusbaum, Ballard High School,)	PDC CASE NO: 04-664
Seattle School District No. 1)	
)	
Respondents.)	
)	

IT IS ALLEGED as follows:

I. JURISDICTION

Jurisdiction of this proceeding is based on Chapter 42.17 RCW, the Public Disclosure Act, Chapter 34.05, Administrative Procedure Act, and Title 390 WAC.

II. LAW

RCW 42.17.130 states in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency and clientele lists of persons served by the office or agency..."

III. BACKGROUND

1. On June 3, 2004, the Public Disclosure Commission received a complaint from Jami Lund of the Evergreen Freedom Foundation alleging that Ed Herbert and Dennis Nusbaum, employees of Seattle School District No. 1, had used the school district's internal mail system and e-mail system to promote placing Referendum 55 and Initiative 884, two proposed statewide ballot propositions, on the November 2, 2004 general election ballot. Both Referendum 55 and Initiative 884 received enough valid signatures to qualify for the November ballot.

2. Referendum 55 asked voters to approve or reject Engrossed Second Substitute House Bill 2295, Charter Schools legislation, that was approved by the 2004 legislature and signed by the Governor. Referendum 55 was defeated on November 2, 2004, meaning that the Charter Schools legislation was repealed by a vote of the people.

3. Initiative 884 proposed to create a fund designated for the support of preschool through college education by increasing the retail sales tax rate by one percent. The initiative was defeated on November 2, 2004.

4. On September 26, 2000, the Public Disclosure Commission (Commission) released Interpretation 00-05, "Guidelines for Local Government Agencies, Including School Districts, in Election Campaigns." In the Interpretation, the Commission stated that distribution of campaign materials by union representatives to their members must be limited to the agency lunchroom or break room which is dedicated to staff and not accessible to the general public. In addition, the Commission cited PDC Declaratory Ruling No. 4 (5/27/1980) in which the Commission reaffirmed a decision it made in an enforcement setting that the use of a local agency's internal mailing systems for candidate endorsements would violate RCW 42.17.130. The Commission stated that the same conclusion applies to using an agency's internal mail system to distribute materials supporting or opposing a ballot measure.

5. The Washington Education Association (WEA) challenged Declaratory Ruling No. 4 in Thurston County Superior Court, Cause # 80-2-00610-7. The Court's ruling to the challenge,

dated September 12, 1980, stated: *“The Court finds that the defendant, Public Disclosure Commission (PDC), correctly interpreted and applied RCW 42.17.130 when it issued Declaratory Ruling No. 4. That Declaratory Ruling correctly held that school district facilities, such as an internal mail distribution system, cannot be used to distribute endorsements by the local affiliates of the plaintiff of political candidates or ballot propositions. Such a use of government facilities would violate the public policy that the government remain neutral in the election process. Any interference with plaintiff’s right of free speech is minimal since adequate alternative methods exist for communicating its political views.”* The WEA did not challenge the ruling.

IV. FACTS

These charges incorporate the Report of Investigation and all of its exhibits by reference.

1. **Dennis Nusbaum** – During the 2003-2004 school year, Dennis Nusbaum was a teacher at Ballard High School in Seattle School District No. 1. He has been a teacher for 26 years and has taught for 18 years in the Seattle School District, with the last four years being at Ballard High School. He was a building representative for the Seattle Education Association (SEA) at Ballard High School during the 2003-2004 school year, and had been the building representative for one year prior to the time of the alleged violation. The SEA is a local affiliate of the Washington Education Association.

2. On May 12, 2004, Mr. Nusbaum forwarded an e-mail from his school e-mail account to the 141 employees of Ballard High School, most of which were members of the SEA. The e-mail supported gathering signatures to place Referendum 55 on the November 2, 2004 general election ballot. The e-mail contained a subject line that read: *“FW: R-55 petitions.”* Mr. Nusbaum’s forwarding message stated: *“Colleagues, Please return completed petitions by noon tomorrow. The remaining incomplete or yet to be completed petitions will be collected on 5/24/04. Thanks...Dennis.”* Mr. Nusbaum’s e-mail forwarded an e-mail he had received earlier in the day from Maggie Crain, Associate Executive Director of the SEA. Ms. Crain’s e-mail to Mr. Nusbaum stated that several SEA employees would be stopping by Ballard High School the

following day (May 13, 2004) to pick up R-55 petitions that had been returned to Mr. Nusbaum by Ballard High School staff. Ms. Crain's e-mail also reminded Mr. Nusbaum of an upcoming signature gathering event at a future Mariners' game, and invited him to attend.

3. Mr. Nusbaum delivered, or had employees assist him in delivering, blank Referendum 55 and Initiative 884 petitions to teachers at Ballard High School. Some blank petitions were delivered to teachers in person, and some were delivered by placing them in the mailboxes of the teachers. Mr. Nusbaum collected completed petitions that were hand delivered to him and placed on his desk at the school. He also collected completed petitions in his school mailbox.

4. **Ed Herbert** - During the 2003-2004 school year, Ed Herbert was a teacher at Ballard High School in Seattle School District No. 1. He has been a teacher for 16 years and has taught the last five years at Ballard High School. He was a building representative for the Seattle Education Association (SEA) at Ballard High School during the 2003-2004 school year, and has been the building representative for the past three years.

5. On June 2, 2004, Mr. Herbert forwarded an e-mail from his school e-mail account to the 141 employees of Ballard High School, most of which were members of the SEA. The e-mail supported gathering signatures to place Referendum 55 and Initiative 884 on the November 2, 2004 general election ballot. The e-mail contained a subject line that read: *"FW: June 2 pick up of Petitions."* Mr. Herbert's forwarding message stated: *"Anyone who still has a petition for Referendum 55 or I-884 ... Please put them in Dennis Nusbaum or my mailbox. They will be picked up by SEA folks today. Thanks!"* Mr. Herbert's e-mail forwarded an e-mail he had received approximately one day earlier from Maggie Crain, Associate Executive Director of the SEA. Ms. Crain's e-mail to Mr. Nusbaum stated: *"A team of SEA folks will be coming by schools on Wednesday, June 2 to pick up signed petitions. Please pull them together and have them ready at the front desk. Thanks!!"*

6. Mr. Herbert delivered, or had employees assist him in delivering, blank Referendum 55 and Initiative 884 petitions to teachers at Ballard High School. The blank petitions were

delivered by placing them in the mailboxes of the teachers. Mr. Herbert collected petitions in his school mailbox.

IV. ALLEGATIONS

Dennis Nusbaum - Staff alleges, based on the facts specified in Section IV, that Dennis Nusbaum, a teacher at Ballard High School in Seattle School District No. 1, committed multiple violations of RCW 42.17.130 as follows:

1. By delivering, or causing to be delivered, blank Referendum 55 and Initiative 884 petitions to approximately 70 teachers at Ballard High School in their school mailboxes in May 2004, and by directing teachers to place completed petitions in his school mailbox.
2. By using his school computer to forward an e-mail to the 141 employees of Ballard High School on May 12, 2004, in support of placing Referendum 55 on the November 2, 2004 ballot, and by reminding teachers to turn in their completed petitions.

Ed Herbert - Staff alleges, based on the facts specified in Section IV, that Ed Herbert, a teacher at Ballard High School in Seattle School District No. 1, committed multiple violations of RCW 42.17.130 as follows:

1. By delivering, or causing to be delivered, blank Referendum 55 and Initiative 884 petitions to approximately 70 teachers at Ballard High School in their school mailboxes in May 2004, and by directing teachers to place completed petitions in his school mailbox.
2. By using his school computer to forward an e-mail to the 141 employees of Ballard High School on June 2, 2004, in support of placing Referendum 55 and Initiative 884 on the November 2, 2004 ballot, and by reminding teachers to turn in their completed petitions.

RESPECTFULLY SUBMITTED this 27th day of December, 2004.

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Director of Compliance